STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Mr. Chairman and Members of the Committee:

I am pleased to appear before you on behalf of the Disabled American Veterans (DAV), one of the organizations presenting *The Independent Budget* (IB), to discuss the President's fiscal year (FY) 2004 budget proposal for the Department of Veterans Affairs (VA). This is naturally one of the most important hearings of the year for your constituents and our members because the viability of all veterans' programs depends on funding sufficient to support timely and effective delivery of benefits and because government performance and public policy considerations are inextricably linked to the budget.

As usual, we have compelling issues and important challenges to address together. As usual, the President's budget symbolically provides a platform for beginning deliberations, but does not necessarily always provide accurate groundwork on which to base your choices on funding levels or policy matters. As what we believe to be a more realistic assessment of VA's funding requirements and appropriate program improvements, the DAV presents the IB in collaboration with AMVETS, the Paralyzed Veterans of America (PVA), and the Veterans of Foreign Wars of the United States (VFW).

Each of the four coauthors takes primary responsibility for selected parts of the IB. In the interest of time and avoidance of duplication, the four organizations primarily focus their testimony here on their area of responsibility in the IB. Therefore, my testimony will predominantly concern the Benefits Programs, administrative expenses, and Judicial Review in Veterans' Benefits. However, before I address those issues, I do want to briefly discuss an issue of major concern to all the IB coauthors, and, indeed, a major concern for thousands of veterans who reside in your districts and all across this Nation.

Medical care for veterans is one of the most important, if not the most important, obligations of our Government. VA's health care system is undeniably one of the world's largest health care systems, which was created and designed for, and dedicated solely to, the care of those who have earned it by sacrifices and blood. More than half of the Nation's practicing physicians received medical training in VA, and VA employs a substantial number of all the Nation's physicians. VA is the Nation's largest employer of nurses and psychologists, for example, and employs large numbers of other health care professionals, such as pharmacists, social workers, dieticians, and physical therapists to name just a few. VA is the one national institution that we most associate with services to veterans.

Like the changing world in general, the VA health care system has changed. These changes involve profound improvements in methods and means for delivering health care. They involve expansion to meet growing demand and to increase efficiency by obtaining economies of scale. The VA health care system has been, and is even more so today, a world leader in research, innovations, and the capacity to deliver quality health care to a large patient population despite the fact that, on the whole, VA's patients are older, more disabled, and have a greater need for medical care that places a heavier strain on finite resources. The VA health care system is undeniably a phenomenal success. The total dimensions of the value and importance of this national asset cannot be overstated. Its importance is not only to veterans, but also to the national economy and to the advancement of medical science generally. The incidental benefits and positive impact of this unique national health care system are immeasurable. This is a resource that we simply cannot afford to neglect and thereby allow its deterioration.

No such world-class organization can be built and maintained without a genuine national commitment and an investment comparable to the magnitude of this system's worth. Yet, we see the viability of this invaluable asset imperiled year after year by inadequate funding from our Government. We see VA's best efforts to improve services, to plan strategically, and to find long-term savings and efficiencies frustrated and offset by the uncertainties of the politics of the annual appropriations process. Consequently, and worst of all, we see the benefits of good medicine being diminished by delayed care, and we see sick and disabled veterans being denied desperately needed care altogether. It all seems so shortsighted, so contrary to the noble mission of the VA health care system, and so at odds with the moral obligation we have to ensure veterans' care remains a top national priority. Like the funding necessary to meet the obligations of the mandatory programs, the funding necessary to sustain medical care services for veterans can be projected and should be guaranteed in authorizing legislation. As we expect, our servicemembers make whatever extraordinary sacrifices are necessary to maintain our national defense. As we expect, VA's medical care system meets extraordinary demands to care for those servicemembers when they become veterans. We have a right to expect our Government to provide VA the resources it must have to meet those extraordinary demands and fully honor our obligation to care for veterans in their time of need. Unlike many complex problems that confront us, the solution here is not elusive technically. The solution is funding through a permanent authorization under a formula that ensures resources correspond to demand. While such legislation does not present any exceptional technical challenge, it does require a genuine commitment by legislators to maintain our veterans' health care system. We hope to see a genuine commitment to disabled veterans in the form of legislation to guarantee funding for VA's premiere health care system. Incidentally, we note that the President's budget recommends mandatory health care funding for non-Medicare-eligible military retirees similar to mandatory funding already authorized by Public Law 106-398 for Medicare-eligible retirees.

Let me also add here, that the DAV is troubled by the Administration's trend toward reducing the Government's obligation to fund veterans' programs by shifting more and more costs directly to veterans themselves. The President's budget would rely on a projected $2.1 billion in collections to operate VA's medical care program for veterans. The IB opposes the imposition of copayments or user fees of any kind upon veterans. We believe requiring veterans to pay for the benefits a grateful nation provides them is fundamentally at odds with the purposes of veterans' benefits.

The President's total budget request of $63.6 billion includes appropriations and collections. The President's budget for the Veterans Benefits Administration (VBA) includes $33.695 billion in mandatory spending and $1.218 billion in discretionary spending. The budget for mandatory spending includes the costs of proposed new legislation, principally $355.2 million to cover a proposed cost-of-living adjustment (COLA) for compensation, which would be based on the increase in the cost of living as measured under the Consumer Price Index (CPI), projected to be 2.0 percent. The compensation COLA applies to disability compensation, dependency and indemnity compensation (DIC), and the clothing allowance.

In addition to the compensation COLA, the President's budget proposes several other legislative changes in the benefit programs, the total cost of which, including the COLA, would be $412.728 million. However, based on projected savings of $127.007 million from a legislative proposal to eliminate compensation for certain service-connected disabilities, the net cost of these changes would be $285.721 million for FY 2004. While we support the compensation COLA and other beneficial legislative proposals, we strongly object to eliminating compensation for certain service-connected disabilities to offset part of the costs of the changes.

As does the President's budget, the IB recommends a compensation COLA to maintain the value of compensation in relation to the cost of living. Let me add here, however, that the DAV believes the COLA for disability compensation should be based on the Labor Department's Employment Cost Index (ECI) for private sector wages and salaries. Disability compensation is intended primarily to make up for average impairments in earning capacity in civil occupations, and the ECI would appear to be a more appropriate index for this purpose.

For the compensation program, the Administration proposes legislation to authorize full compensation benefits to New Philippine Scouts and full DIC for eligible survivors of Filipino veterans. This proposal has an equitable purpose, and we do not oppose it.

For the pension program, the President's budget proposes restoration of provisions that would make awards of death pension effective the first day of the month in which death occurred if the claim is filed within 1 year of the date of death. Prior amendments reduced this period from 1 year to 45 days. The IB has no recommendation on this issue, but it would liberalize the program for needy widows of wartime veterans, and in the process, restore uniformity to effective date provisions and thus restore uniformity to the administration of the compensation and pension programs.

The President's budget recommends two legislative changes for education benefits: (1) extension of time for use of education benefits by members of the National Guard, and (2) authorization for on-the-job training in self-employment under the Montgomery GI Bill. We have no objections to these changes. The Administration also recommends elimination of the Education Loan Program because more than 10 years have passed since the last loan was made under the program. We have no position on this recommendation.

For the VA housing program, the budget recommends legislation to convert the direct loan program for Guaranteed Transitional Housing for Homeless Veterans from a mandatory

program to a discretionary grant program. The IB has no position on this issue, but we question how the program would be more effective with this change.

As noted, the President's budget proposes to achieve savings by legislation that would eliminate compensation for certain service-connected disabilities. Specifically, the proposal would eliminate compensation for that part of the impairment from a service-connected disability attributable to alcohol or drug abuse. Except where secondary to another service-connected disability, the law already prohibits compensation for disability from alcohol or drug abuse. For several years, through an erroneous interpretation of law and one that was inconsistent with another interpretation within VA itself, VA denied compensation for disability from alcohol or drug abuse although the abuse was caused by the effects of another service-connected mental or physical disability. Congress intended to prohibit compensation for alcohol and drug abuse as primary conditions, but did not intend to deny compensation when a veteran's service-connected mental or physical disability induced use of alcohol or drugs to escape mental or physical pain. Alcohol use, particularly, is more prevalent among veterans who suffer from the disordered thinking of serious mental conditions or who suffer from the disturbing symptoms of posttraumatic stress disorder caused by severe psychological trauma such as the death and destruction of combat. Having misinterpreted the law against veterans and having that misinterpretation set aside by the United States Court of Appeals for the Federal Circuit, the VA now wants Congress to change the law to conform to VA's improper view of what the law should be. Regrettably, this recommendation reflects very negatively upon the agency that is charged with understanding and having insight into the effects of trauma and severe disabilities upon veterans. It evidences a narrow-minded insensitivity to the real nature of the effects of severe trauma and severe disability upon young men and women who bear these extraordinary burdens and suffer these extremely traumatic experiences. We oppose such an unwarranted, inequitable change in the strongest possible terms, and we urge this Committee to appropriately dismiss this recommendation with no consideration whatsoever.

We are similarly disappointed that the President's budget continues to make so few recommendations to improve veterans' benefits when so many improvements are needed. For the Benefits Programs, the IB makes the following legislative recommendations in addition to its recommendation for a compensation COLA:

- to exclude compensation as countable income for Federal programs
- to repeal the prohibition of service connection for disabilities related to tobacco use
- to repeal delayed effective dates for payment of increased compensation based on temporary total disability
- to expand Montgomery GI Bill eligibility to persons who, but for service on or before June 30, 1985, would be eligible for education benefits under this program
- to authorize refund of contributions to veterans who become ineligible for the Montgomery GI Bill by reason of discharges characterized as "general" or "under

honorable conditions"

- to increase the amount of the grants for specially adapted housing and to provide for automatic annual adjustments for increased costs

- to provide a grant for adaptations to a home that replaces the first specially adapted home

- to authorize specially adapted housing grants to servicemembers with qualifying service-connected disabilities who are awaiting discharge

- to authorize payment of reasonable fees for compliance inspections on housing being constructed or adapted under the specially adapted housing program

- to increase the amount of the automobile grant and to provide for automatic annual adjustments for increased costs

- to increase the maximum VA home loan guaranty and provide for automatic annual indexing to 90% of the Federal Housing Administration-Federal Home Loan Mortgage Corporation loan ceiling

- to exempt the dividends and proceeds from and cash value of VA life insurance policies from consideration in determining entitlement under other Federal programs

- to authorize VA to use modern mortality tables instead of 1941 mortality tables to determine life expectancy for purposes of computing premiums for Service-Disabled Veterans' Insurance

- to increase the maximum protection available under the base policy of Service-Disabled Veterans' Insurance from $10,000 to $50,000

- to increase the maximum coverage under Veterans' Mortgage Life Insurance from $90,000 to $150,000

- to repeal the 2-year limitation on payment of accrued benefits

- to protect veterans' benefits from unwarranted court-ordered awards to third parties in divorce actions

The IB also recommends legislation to remove the offset between military retired pay and disability compensation and legislation to extend the 3-year limitation on recovery of taxes withheld from disability severance pay and military retired pay later determined exempt from taxable income.

Where in the past, the President's budget has separated requests for mandatory funding for the benefit programs from requests for discretionary funding for VBA's General Operating

Expenses, the President's budget this year eliminates that traditional bifurcation, and, in addition, includes in the discretionary funding appropriations for construction. The new format merges the requests for both mandatory and discretionary funding associated with each business line of VBA. The President's request for discretionary funding for all VBA business lines, minus funding for construction, is essentially at the same level as the budget request for FY 2003.

In the business lines under VBA, VA is continuing its several ongoing initiatives to improve the administration of the benefit programs. The most formidable and longest running challenge is the compensation and pension claims backlog. VBA continues to address this problem through a combination of measures, including process changes, improved skills through better training, new technology, and accountability. So many initiatives affecting so many aspects of compensation and pension claims processing are in play simultaneously that the net effect is difficult to appreciate at this time, although we are continually monitoring VA's reported processing times and accuracy rates. New technology plays a major role in the efforts to improve program administration and benefits delivery in the other VBA business lines as well.

This year's budget request would authorize 12,720 total full-time employees (FTE) for VBA, a net reduction of 61 FTE from FY 2003 levels. Compensation and Pension (C&P) Service would maintain FY 2003 levels, which was down 190 FTE from FY 2002. Education Service would gain 17 FTE, while Loan Guaranty Service would lose 73 FTE, Insurance Service would lose 4 FTE, and Vocational Rehabilitation and Employment Service would lose 1 FTE. In this period of change for VBA, the IB has not included recommendations for increased staffing, but we watch with guarded concern for the time being.

In the IB, we have recommended that VBA's program directors be given line authority over their field employees who process and decide benefit claims. Under VBA's current management structure, the C&P Director, for example has no authority to enforce quality standards and VA policy. This presents an obstacle to enforcement of accountability, which is essential to VA's success in overcoming its quality problems.

We have recommended that the Secretary of Veterans Affairs take the steps necessary to improve VA's rulemaking. From our experience over the last several years, we have seen VA's regulations become more self-serving and arbitrary. Veterans' organizations are challenging new VA regulations in court with regularity. Currently, several veterans' organizations have before the United States Court of Appeals for the Federal Circuit a challenge to VA's regulations to implement the legislation that restored VA's duty to assist veterans. If these regulations are invalidated by the court, VA may have to rework a large number of the claims that were developed and decided under the invalidated rules. Additionally, veterans' organizations have before the Federal Circuit a challenge to VA regulations that authorize the Board of Veterans' Appeals (BVA) to obtain new evidence and make initial decisions on issues in claims. This procedure deprives veterans of the statutory right to an initial decision and one review on appeal when they believe the initial decision to be wrong. It creates conditions for increased inefficiency because field office adjudicators can avoid fully developing claims as required by law with the knowledge that BVA will correct record deficiencies on appeal. This shifts the work that should be done in regional offices to VA's appellate board, which was created to "review" field office actions in record development and field office decisions, not develop the

record itself and "make" initial decisions on new evidence. Because BVA is now conducting its own record development to correct the deficiencies it identifies in field office development, we are seeing a growing claims backlog at BVA. If the court agrees with our view that VA's regulations authorizing this practice are contrary to law, BVA may well be required to vacate many of its decisions and send the cases back to regional offices to correct record deficiencies and afford veterans the due process required by law. Just last year this Committee reported legislation that was later enacted to override an arbitrary VA regulation on anatomical loss of a breast for compensation purposes. In the IB, we have recommended that Congress scrutinize VA's rulemaking more closely as a part of its oversight role.

Although VBA's C&P Service has many reforms underway to improve compensation and pension claims processing, the IB recommends that the primary focus should be more on correcting the root causes of the claims backlog. Those who have witnessed C&P's repeated failures to overcome its claims processing deficiencies know that those failures involve repetitive patterns in which VA develops plans but fails to follow through with decisive steps to solve the difficult problems. VA attempts to overcome its serious deficiencies by fine-tuning its procedures and employing new technology. While those efforts may aid in improving claims processing, alone or in combination they are not enough to enable VA to overcome its longstanding problem. The coauthors of the IB believe that it is obvious VA must resolve to focus primarily on eliminating the root causes of its claims backlog if it is to ever succeed in restoring the system to acceptable levels of performance and service. VA's adjudicators make erroneous decisions because they have not been properly trained in the law, they have operated in a culture that tolerated indifference to the law, and they have not been held accountable for poor performance and proficiency. Accordingly, in conjunction with the deployment of better training, VA must take bold steps to change its institutional culture, and it must make its decisionmakers and managers truly accountable.

If VA's ambitious goal of improving timeliness takes precedence over its goal of improving quality, VA will merely repeat the failures of the past. Speeding up the process with the single goal of reducing claims processing times and claims backlogs is self-defeating if, because quality is compromised, a substantial portion of the cases must be reworked. In this respect, VA has shown some inability to learn from its past mistakes.

To meet its workload demands, VA must take full advantage of automated information systems. These systems can facilitate case management, claims processing, and decisionmaking in ways that improve accuracy and efficiency. To determine and implement its optimum performance in record development, disability examinations, and claims disposition, VA is undertaking a review of its claims process with the goal of developing an integrated electronic format to aid in uniform and correct application procedures and substantive rules and to allow for the electronic transmission of data from its source into the claims database. Known as the C&P Evaluation Redesign (CAPER) initiative, this project is being undertaken by a CAPER team, working with outside experts. VA began work on this initiative in 2001 with a goal of nationwide deployment by April 2005. VA now hopes to have this system fully in place by September 2005. To achieve that goal, VA needs approximately $7 million in FY 2004 for business consultants, software/systems integration, independent validation and verification, equipment and software, and employee travel and training. VA needs this funding to stay on its

schedule to complete testing of the prototype system it is developing in FY 2003 and have the system fully deployed by September 2005. The IB therefore recommends that Congress provide $7 million for CAPER in the FY 2004 budget. The President's budget requests only $3.8 million. We understand that the President's budget would spend less than our recommendation by completing less of the development in FY 2004.

Inadequate disability examinations have been a major factor in VA's claims processing problems. Experience gained from a pilot project and a contract authorized by Public Law 104-275 demonstrates that a private contractor can economically provide adequate and timely disability examinations to veterans at locations near their homes with a high level of veteran satisfaction. Authority for contract examinations at all VA regional offices would allow VA to improve claims processing nationwide. VA projects that it will request approximately 500,000 disability examinations in FY 2004. To obtain these examinations under contract would require an appropriation of approximately $250 million. The IB recommends that Congress authorize VA to use contractors for disability examinations at all VA regional offices and include $250 million in the budget for contract examinations. The President's budget requests only $50.4 million to continue the current limited use of contractors.

The President's budget request for BVA would essentially maintain the status quo. It requests 448 FTE and $50.443 million in budget authority, a reduction of 3 FTE and an increase of $1.692 million in appropriations. With these resources BVA expects to reduce appeals resolution time (the time from initiation of an appeal to final resolution) from 731 days in FY 2002 and a projected average 590 days in FY 2003 to 520 days in FY 2004. At the same time, BVA projects an increase in BVA cycle time (the time the case is physically at the BVA), from 86 days in FY 2002 and 250 days projected in FY 2003 to 300 days in FY 2004. This increase in the time it takes BVA to resolve its work on the appeal is attributed to BVA's new responsibility to develop evidence in cases where the regional office failed to properly develop the record.

The IB makes only one recommendation for BVA this year. We again recommend that VA amend its regulation that purports to exempt BVA from substantive rules on benefit entitlement that are binding on VA field adjudicators, just as if they were law. It makes no sense to allow BVA to ignore substantive rules in its decisions that field adjudicators are bound to apply in making claims decisions.

Although not a part of the budget, the DAV objects to new regulations that are apparently nearing publication in final form to authorize BVA members to call themselves "Veterans Law Judges." We raise this objection here because allowing Board members to proclaim themselves to be judges will do nothing to benefit decisionmaking for veterans. While the costs of changing titles in form letters and other materials may not be substantial, there will no doubt be some cost to the taxpayer. That added cost will have no benefit to taxpayers or veterans in return. In addition to the fact that BVA's members are not really judges, we object because this will unavoidably add unnecessary formality to proceedings Congress intended to remain informal. If Board members desire to have titles that include the word "judge," they will no doubt expect to have the formal demeanor of judges and will expect others to address them and treat them as judges. Congress previously rejected VA efforts to obtain legislation to authorize this change in the title of Board members. Now, VA will promulgate a rule to authorize Board members to call

themselves, and expect others to call them, judges although all pertinent statutes refer to them as "members." The DAV recommends legislation to prohibit VA from assigning Board members any title or status other than what is provided in statute.

The IB also includes recommendations for improving judicial review in veterans' benefits. In enacting legislation in 1988 to authorize veterans to challenge VA decisions in court, Congress recognized the importance of the right to have VA's decisions reviewed by an independent body. Judicial review has had the beneficial effect of exposing administrative departure from the law and forcing reforms within VA. For the most part, judicial review of the claims decisions of VA has lived up to the positive expectations of its proponents. To some extent, it has also brought about some of the adverse consequences seen by its opponents. Based on recommendations in last year's IB, Congress made some important adjustments to correct some of the unintended effects of the judicial review process. We hope to see these changes applied in a manner that will fulfill congressional intent to ensure that veterans have meaningful judicial review in all aspects of their appeals. Other adjustments are still needed, however.

Last year, the IB recommended legislation to change the standard under which the Court of Appeals for Veterans Claims (CAVC or "the Court") reviews VA's findings of fact in claims decisions. The Court's application of the "clearly erroneous" standard has conflicted with and undermined the benefit-of-the-doubt rule. Under the statutory benefit-of-the-doubt rule, VA is mandated to resolve factual questions in the veteran's favor unless the evidence against the veteran is stronger than the evidence for him or her. However, CAVC had been upholding a VA decision when there was any evidence to support it, and this rendered the benefit-of-the-doubt rule unenforceable. Although the legislation eventually enacted did not make the changes recommended by the IB, Congress did amend the law to expressly require CAVC to consider, in its clearly erroneous analysis, whether a finding of fact is consistent with the benefit-of-the-doubt rule. The IB now recommends that the Veterans' Affairs Committees conduct oversight hearings to evaluate whether CAVC is fully carrying out the congressional intent of last year's amendments.

When Congress authorized judicial review of veterans' claims, one of its foremost concerns and intents was preservation of the informality of VA's administrative claims process under conditions in which BVA's decisions would be subject to review by a court. Congress was very much aware of the dangers that the courts might attempt to impose their own formal rules of adversarial proceedings upon VA's informal claims process and therefore sought to prevent this adverse consequence. In imposing its own requirement upon veterans that they must have expressly argued a technical or legal point before BVA to have the point considered by the Court, CAVC has, for its own expedience, largely ignored congressional intent, the law, and the unique nature and purposes of veterans' programs. The Court has done the very thing Congress so carefully and clearly acted to forestall.

Unlike judicial or more formal administrative proceedings where it is the responsibility of the parties to raise and plead all legal arguments and discover and present all material evidence, veterans are not expected to know and plead the legal technicalities of veterans' benefits. Veterans file simple claims forms with basic information, not detailed legal pleadings. Congress repeatedly stated its intent to preserve and maintain this informal process throughout the

legislative history of its law to authorize judicial review. It is VA's legal obligation to assist the veteran in filing the claim and developing the evidence, and it is VA's obligation under the law to consider all relevant legal authorities and potential bases of entitlement regardless of whether they are expressly raised by the veteran. When a veteran appeals to BVA and receives an unfavorable decision, the veteran has exhausted his or her administrative remedies. Any failure to fully develop the record, to fully explore all avenues of entitlement, or to apply all pertinent law is an error of omission by BVA which CAVC should address in its appellate review irrespective of whether the veteran knew of or raised the specific point before BVA. Yet, for its own purposes, CAVC refuses to consider points of argument that were not specifically raised before BVA. By requiring veterans to know and expressly raise and argue all the complex legal points relevant to a claim, CAVC shifts the government's obligations to veterans, imposes unnecessary formalities upon VA's administrative claims process, and fundamentally alters the non-adversarial, pro-veteran nature of VA proceedings. The Court seems unable or unwilling to grasp the simple fact that, in considering veterans' appeals, it reviews a claims record, not a litigation record. The IB therefore recommends legislation to prohibit judicial imposition of formal pleading or so-called "exhaustion" requirements upon the VA claims process.

Currently, VA regulations, with the exception of provisions in the *Schedule for Rating Disabilities*, are subject to challenge in the Court of Appeals for the Federal Circuit (CAFC). The IB recommends expanding CAFC jurisdiction to permit it to review challenges to the validity of the rating schedule on the narrow basis of whether the rating is contrary to law or is arbitrary and capricious. The coauthors of the IB believe that no unlawful or arbitrary and capricious rating schedule provision should be immune to review and correction.

Obviously, much of what this Committee will seek to accomplish on behalf of veterans this year will be subject to what Congress appropriates for veterans' programs. We urge the Committee to press for a budget that is adequate for existing programs and allows for some improvement in benefits and services for veterans. We hope our independent analysis of the resources necessary for veterans' programs and our legislative and policy recommendations are helpful to you, and we sincerely appreciate the opportunity to present our views and recommendations to the Committee.